



James J.R. Talbot  
Executive Director-  
Senior Legal Counsel

AT&T Services, Inc.  
1120 20<sup>th</sup> Street NW Ste. 1000  
Washington, D.C. 20036

Phone: 202.457.3048  
Fax: 202.463.8066  
E-mail: jjtalbot@att.com

**PUBLIC VERSION -- REDACTED FOR PUBLIC INSPECTION**

VIA ECFS and Hand Delivery

**Accepted / Filed**

August 11, 2016

**AUG 11 2016**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Federal Communications Commission  
Office of the Secretary**

**DOCKET FILE COPY ORIGINAL**

ATTN: Mindel de la Torre, Chief, International Bureau

*Re: Request for Review of Service Agreement, IB Docket No. 10-95, AT&T Corp.,  
ITC-214-19960830-00414 & Request for Confidential Treatment*

Dear Ms. Dortch:

AT&T Corp. ("AT&T") hereby submits for review the public version of its Service Agreement for the Operation of International Telecommunications with Empresa de Telecomunicaciones de Cuba, S.A. ("Service Agreement"), pursuant to the terms and conditions of the benchmark policy waiver applicable to U.S. carriers seeking to provide direct telecommunications services to Cuba as specified in the Commission's *TeleCuba Waiver Order*, and as revised by the Commission's *International Settlements Policy Reform Order* and the *Order Removing Cuba from the Exclusion List*.<sup>1</sup> AT&T also is filing a notification with the International Bureau stating that AT&T agrees to accept the terms and conditions for a waiver of the benchmark rate applicable to Cuba.

Pursuant to the Commission's decision in *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55 (FCC 98-184), released Aug. 4, 1998 (Confidential Information Order) and in accordance with the Commission's rules related to the Freedom of Information Act, 47 C.F.R. §§ 0.457 and 0.459, AT&T requests confidential treatment of the Service Agreement. This agreement contains highly sensitive commercial information that plainly falls within the "confidential commercial information" exemption to the FOIA's disclosure requirements. See 5 U.S.C. § 552(b)(4). Accordingly, pursuant

<sup>1</sup> *iConnect Wholesale, Inc. d/b/a TeleCuba, Petition for Waiver of the International Settlements Policy and Benchmark Rate for Facilities-Based Telecommunications Services with Cuba*, 26 FCC Rcd. 5217, ¶ 31 (2011) (*TeleCuba Waiver Order*); *International Settlements Policy Reform*, 27 FCC Rcd. 15521 (2012) (eliminating the International Settlements Policy and applying a modified version to Cuba) (*International Settlements Policy Reform Order*); *Removing Cuba from the Exclusion List for International Section 214 Authorizations*, 31 FCC Rcd. 194 (2016) (*removing Cuba from the Exclusion List*).

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to the FOIA and Commission Rule 0.459, this confidential data should be maintained by the Commission as confidential and should not be made available for public inspection or disclosure.

AT&T is submitting under separate cover an unredacted version of the Service Agreement for Commission review marked "CONFIDENTIAL – NOT FOR PUBLIC INSPECTION."

**Statement pursuant to 47 C.F.R. § 0.459(b)**

**1. Specific information for which confidential treatment is sought, 47 C.F.R. § 0.459(b)(1).**

AT&T requests confidential treatment for the information contained in the Service Agreement which is redacted on the version of the document bearing the legend "REDACTED-FOR PUBLIC INSPECTION" at the top of each page, but is not redacted on the version bearing the legend "CONFIDENTIAL – NOT FOR PUBLIC INSPECTION" at the top of each page. The redacted portions of the Service Agreement contain detailed and highly sensitive commercial information, such as payment methods and liability limitation figures.

**2. Circumstances giving rise to this submission, 47 C.F.R. § 0.459(b)(2).**

The Service Agreement is submitted pursuant to requirements established in connection with the *TeleCuba Waiver Order* as revised by the Commission's *International Settlements Policy Reform Order* and the *Order Removing Cuba from the Exclusion List*.

**3. Degree to which the information is commercial or financial, or contains a trade secret or is privileged, 47 C.F.R. § 0.459(b)(3).**

The redacted portions of the Service Agreement contain sensitive commercial information that should be withheld from public disclosure pursuant to FOIA Exemption 4. 5 U.S.C. § 552(b)(4). The phrase "commercial or financial information" has a broad meaning under the FOIA, and includes anything pertaining to or relating to commerce. *American Airlines, Inc. v. National Mediation Bd.*, 588 F.2d 863, 870 (2d Cir. 1978); *see also Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983) (documents are commercial if a submitter has a commercial interest in them). The information at issue here clearly concern AT&T's business dealings with a foreign supplier and are thus undoubtedly commercial information under the FOIA.

**4. Degree to which the information concerns a service that is subject to competition, 47 C.F.R. § 0.459(b)(4).**

The U.S. international market is highly competitive. *See, e.g.,* Federal Communications Commission, *2013 International Telecommunications Data*, DOC-334395, at Table 4 (2015). This includes competition among U.S. carriers to terminate calls to Cuba. The Service Agreement relates to AT&T's routing of international calls to Cuba, which are subject to significant competition.

**5. How disclosure of the information could result in substantial competitive harm, 47 C.F.R. § 0.459(b)(5).**

Confidential treatment is warranted where release of information would raise “the likelihood of substantial competitive injury” in a competitive market. *Public Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1291 (D.C. Cir. 1983) (quoting *Gulf & Western Industries v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979)). See also *Nat’l Parks and Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (material is “confidential” if it would “cause substantial harm to the competitive position of the person from whom the information was obtained.”). Release of the information contained in the redacted portions of the Service Agreement would cause AT&T competitive harm because competitors could use that information to identify business opportunities and operate more effectively in the marketplace to the detriment of AT&T.

**6. Measures taken to prevent unauthorized disclosure, 47 C.F.R. § 0.459(b)(6).**

**7. Whether the information submitted is available to the public and the extent of any previous disclosure of the information to third parties, 47 C.F.R. § 0.459(b)(7).**

The redacted portions of the Service Agreement contain sensitive commercial information that is maintained on a confidential basis within AT&T and would not ordinarily be disclosed to parties outside AT&T. Thus, this information is “confidential” in that it “would customarily not be released to the public.” *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 873 (D.C. Cir. 1992).

**8. Period during which the submitted material should not be available for public disclosure, 47 C.F.R. § 0.459(b)(8).**

AT&T requests that confidential treatment apply indefinitely. The redacted material should be withheld from public disclosure as long as the data in question would provide a basis for competitors to gain insight into AT&T’s commercial operations and derive competitive benefits therefrom. AT&T cannot determine when this information would become “stale” for such a purpose.

**9. Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.**

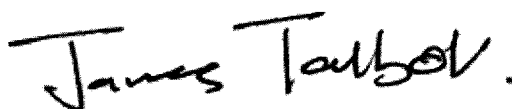
Exemption 4 of the Freedom of Information Act shields information which is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. See *Washington Post Co. v. U.S. Department of Health and Human Services*, 690 F.2d 252 (D.C. Cir. 1982). The redacted material clearly satisfies the first two elements of that test. With respect to the third element of the above test, information is considered to be “confidential” if disclosure is likely to (1) impair the government’s ability to obtain necessary information in the future, or (2) harm substantially the competitive position of the person from which the information was obtained. *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). As described above, the information for which the exemption is requested is highly sensitive commercial information, submitted by AT&T, a non-government entity. It thus should be considered confidential. See 5 U.S.C. § 552(b)(4); *Nat’l Parks and Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (information required to be submitted to the government is considered to be “confidential” if disclosure is likely to harm substantially the competitive position of the person from whom the information was obtained); see also *Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871, 873 (D.C. Cir. 1992).

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Accordingly, AT&T respectfully requests that the Commission withhold from public disclosure the confidential, redacted portions of the Service Agreement. AT&T additionally requests that the non-redacted version of the Service Agreement, which AT&T is submitting under separate cover, not be included in any publication while this request is pending.

If you have any questions concerning this matter, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink that reads "James Talbot." The signature is written in a cursive, slightly slanted style.

James J.R. Talbot  
Executive Director-Senior Legal Counsel

cc: via email (redacted version)  
Denise Coca  
David Krech

**SERVICE AGREEMENT**

**FOR THE OPERATION OF INTERNATIONAL TELECOMMUNICATIONS**

**THIS SERVICE AGREEMENT FOR THE OPERATION OF INTERNATIONAL TELECOMMUNICATIONS** (hereinafter referred to as "Agreement") is made by and between **AT&T Corp.**, a company organized and existing under the laws of the State of New York, United States of America, (hereinafter referred to as "**AT&T**", a "Party"), having its registered office at One AT&T Way, Bedminster, NJ 07921 USA, represented herein by George B. Sloan in his capacity as Vice President, Global Access Solutions, International Access Management; and

**EMPRESA DE TELECOMUNICACIONES DE CUBA, S.A.**, hereinafter referred to as "**ETECSA**," a "Party" (collectively with **AT&T**, the "Parties"), a joint venture company, having its legal residence at Miramar Trade Center, Beijing Building, 3<sup>rd</sup> Ave between 76 and 78, Playa, Havana, Cuba, Postal Code 11300, legally organized and existing under the laws of the Republic of Cuba, through Public Deed No. 1657, dated June 28, 1994, registered in the Central Commercial Registry 1189, Folder 91, Page 16738; in the Central Registry of Anonymous Societies in Book 135, Folder 159, Page 9405, First Section, and in the Registry of Foreign Investment, currently the Central Commercial Registry of the Ministry of Justice in the Books of Joint Ventures, Volume II, Folder 043 to 047 dated July 21, 1994; with a Tax Identification Number of NIT-32000398950, represented herein by Eng. Vivian Iglesias Barroso, in her capacity as Main Director of the Division of International Services, who was appointed by Agreement No. 66 and empowered to sign this Agreement subject to Agreement No. 44 on May 15th 2012 by the Board of Directors and by Agreement No. 4 on February 13th 2012 adopted by the Shareholders' meeting.

**WHEREAS, AT&T** is a telecommunications company duly authorized under the laws of the United States of America to provide international telecommunications services to customers in the United States of America (meaning the 50 states of the United States of America, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands and other territories and possessions of the United States) (hereafter collectively, for convenience, the "United States" or "USA"), and

**WHEREAS, ETECSA** is a telecommunications company duly authorized under the laws of Cuba to provide international telecommunications services to customers in Cuba, and subject to the authorization granted by the Cuban government;

**INSOFAR AS AT&T and ETECSA** both wish to provide International Telecommunications Services between the United States and Cuba and other international destinations as agreed to in writing by the Parties.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows

**1. GENERAL ASPECTS**

- 1.1** Subject to the terms and conditions established hereby: (a) **AT&T** shall provide Services (as defined in Clause 2.1) to points in the United States; and (b) **ETECSA** shall provide Services to points in Cuba as agreed in writing by the Parties.

**2. SERVICES**

- 2.1.** The communications channels that will be operated jointly by **AT&T** and **ETECSA** shall be used to provide telecommunications services as agreed by the Parties in writing from time to time. The provision of Services shall be detailed in the attached **Annexes** of this Agreement, which shall be an integral part of same (the "Services"). Except as stated in this Agreement, all conditions and warranties, whether express or implied, statutory or otherwise, including but not limited to warranties of merchantability and fitness for a particular purpose, are excluded to the extent permitted by law.
- 2.2.** Neither Party authorizes anyone, whether an employee, agent or subcontractor or otherwise, to make a warranty of any kind on its behalf and the other Party should not rely on any such statement.
- 2.3.** The Parties may use any Services provided by the other Party for their own purposes, provided that the Parties:
- (a) comply with the terms of any legislation on telecommunications, including applicable tariffs, and any license legally applicable to it in any country where the Services are provided;
  - (b) do not use the Services to send any communication which is illegal under the laws of either country from which the communications are originated or terminated; and
  - (c) shall remain responsible for any access to and use of the Services by its customers.
- 2.4.** The Parties agree that, to the extent allowed by law or regulation, neither Party will have liability to claims by the other Party or third-parties arising from the other Party's acting contrary to the provisions of this Agreement; and/or the Party's specific reasonable instructions given in writing in accordance with Clause 14 "Notices." This Agreement does

not provide any third party (including end users of either Party) with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

- 2.5. Any further service required to be implemented between the Parties shall be agreed in a duly executed writing as an Addendum to this Agreement.

3. **TECHNICAL REGULATIONS AND METHODS OF OPERATION.**

Unless otherwise provided herein or if jointly agreed by the Parties in writing, as a general rule the technical regulations and methods of operations applied by the Parties shall be arranged according to the Recommendations of the International Telecommunications Union ("ITU") as they are now in effect and as they may become effective from time to time. Traffic and maintenance personnel will use English as the working language. The Parties shall exchange, and keep up to date, a list of key traffic and maintenance personnel and their contact information. The Parties shall keep this writing confidential pursuant to Clause 8 of this Agreement, and shall not file same with any governmental authority without the other Party's prior written consent.

3.1 **Operation**

- 3.1.1. The Parties shall establish and provide international telecommunications services (including voice and switched data communications using traditional switched voice protocol via direct circuits; switched circuits via other countries; or combinations of direct and switched circuits via other countries; or (2) internet protocol; or (3) any other equivalent technology that may develop over time, as the Parties may agree from time to time) between the points in, or those that can be reached by routing through the United States or between the points in or those that can be reached through Cuba, supported by the circuit capacity of the telecommunications systems on submarine cable, satellite, radio or any other communications system available currently or in the future and shall be subject to all the required governmental authorizations. The transmission capability between the United States and Cuba will be provided jointly by **AT&T** and **ETECSA**.
- 3.1.2. **AT&T** and **ETECSA** agree on beginning the operation of international telecommunications circuits which may be upgraded, which upgrading shall be subject to written agreement signed by both Parties.
- 3.1.3. Each Party shall have the right, without liability, to:

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- (a) change the technical specification of the Services for operational reasons after providing reasonable notice in writing, provided that any such change does not materially decrease or impair performance of the Services;
  - (b) suspend the Services in an event of emergency, and/or need to safeguard the integrity and security of its network;
  - (c) immediately remove or disable access to any information or suspend or restrict the provision of the Services (wholly or in part) if a Party is aware of or has some documented evidence to suspect any abuse of the Services.
  - (d) suspend the Services (wholly or in part) if a Party is properly required to do so by applicable law, or regulatory or governmental body to which the Party is subject or subordinate; and
  - (e) disclose or grant access to any communication, content or data if so required by applicable law, or regulatory or governmental body to which the Party is subject or subordinate, in accordance with the fulfillment of the requirements established by law.
- 3.1.4. The Parties acknowledge and agree that neither Party has any obligation to monitor or actively seek facts or circumstances indicating any misuse of the Services or illegal activities except upon: (a) agreement between the Parties; (b) as relevant to an arbitration proceeding brought pursuant to Clause 16.3 and upon request of the other Party; or (c) as required by applicable law, regulation or government order.
- 3.1.5 Each Party agrees that all available Calling Line Identification ("CLI") information within a call that such Party receives, and sends to the other Party for termination, shall be passed on to such terminating party. Neither Party will actively remove CLI from any call it receives from the other Party prior to terminating such call.
- 3.2. **Internal connections.**
  - 3.2.1. **AT&T** shall, at its own costs and expenses, carry out or delegate to another party the execution of all the required actions to achieve an adequate connection of the circuits hereby provided with the telecommunications systems in the United States. **ETECSA** shall, at its own costs and expenses, carry out or delegate to another party the execution of all the required actions to achieve an adequate connection of the circuits hereby provided with the telecommunications systems in Cuba. Any delegation under this Agreement shall not relieve the delegating Party of any of its obligations under this Agreement.



**3.2.2.** A Party will, upon reasonable written notice from the other Party, allow the notifying Party, its employees, agents and subcontractors access to the Party's premises if any of the notifying Party's telecommunications systems are located therein, as may be reasonably necessary for the performance by the Party under this Agreement, including installation, maintenance, recovery or removal of any of the notifying Party's equipment. The notifying Party will use its best commercially reasonable efforts and care to avoid damage in the removal of its equipment and leave the premises in its original condition. The notifying Party, its employees, agents and subcontractors, shall comply strictly with the other Party's rules regarding access to its sites.

**3.3. Quality of the Services**

Both Parties shall make best commercially reasonable efforts to render a reliable and steady service in accordance with generally accepted international quality standards. It is agreed that in the event any direct circuits become inoperable or capacity becomes insufficient, both Parties shall use best commercially reasonable efforts to upgrade the capacity and/or route the communications through alternative paths in accordance with a written agreement the Parties may reach from time to time.

**3.4. Interruptions**

Each Party shall advise the other Party, in writing, as soon as possible, of any telecommunications system failure which arises or is likely to arise from a cause within its area of operation that is expected to cause a material interruption of any or all the Services. In the event any interruption of any of the Services provided hereunder takes place, the Parties shall restore any interrupted Service as soon as reasonably possible.

**3.5. Installation, Protection Devices.**

**3.5.1** Each Party shall ensure that the features and methods of operation of its terminal equipment, and those of its international circuits utilized in provision of Services hereunder, shall not damage the other Party's network or equipment so as to cause degradation of the functioning of the telecommunications system which could bring about a danger for the public or employees of either of the Parties hereof while operating any of such telecommunications.

**3.5.2** Each Party shall bear the expenses for the installation of its equipment and the proper protection devices for its equipment, if required, subject to this paragraph. Each Party will comply with the other Party's reasonable requests which are necessary for reasons of

health, security, safety or the quality and/or provision of any Service rendered to the other Party.

#### 4. STARTING DATE OF THE SERVICES

In order to commence provision of the Services, each Party shall notify the other in writing of the availability of its circuits, and shall perform tests for three (3) consecutive calendar days thereafter. If the outcome of such tests is positive, the commencement of the provision of Service shall be confirmed by both Parties in writing. If, however, the tests are not positive, the Parties shall work together to remove the shortcomings and re-test the Services for positive results.

#### 5. RATES TO APPLY

The rates that will be governing the International Telephone Service herein provided shall be as specified in **Annex A**, as may be amended from time to time in accordance with the procedures and timelines set forth in such Annex.

#### 6. LIABILITY

- 6.1. All liability shall be proved by clear and convincing evidence showing such attributed responsibility.
- 6.2. Subject to Clause 6.2 and Clause 6.3, and to any limitation of liability set out in the relevant Annex, all the contractual liability or any other kind of liability from each Party to the other Party, including liability for negligence or breach of contractual duties under or directly connected with this Agreement, shall be limited to **(Begin Confidential Information)** [REDACTED] **(End Confidential Information)**; provided, however, that such limitation shall not apply to **AT&T's** breach of its payment obligations under this Agreement, including without limitation pursuant to Clause 11.4, or **ETECSA's** breach of its payment obligations hereunder, including but not limited to breach of its obligation under this Agreement to return **AT&T's** prepayment pursuant to Clause 11.3.5.
- 6.3. Notwithstanding any provision in the Agreement to the contrary, the Parties agree to the following Clauses, 6.3.1 and 6.3.2, concerning limitation of liability:
  - 6.3.1. The Parties do not disclaim or limit their liability in the case of death or physical injury to the natural person, when such is a direct consequence of negligence, recklessness, or intentional or fraudulent behaviour by one of the Parties.

- 6.3.2.** Neither Party may disclaim or limit its liability for damage suffered by one Party caused by the other Party's fraudulent misrepresentation.
- 6.4** The Parties agree to limit their liability in the following respects set forth in Clauses 6.4.1 and 6.4.2.
- 6.4.1.** In no event shall either Party be liable to the other or to that Party's customers or any third party in any respect for any indirect, incidental, consequential, exemplary, punitive, reliance or special damages, or for any loss of revenue, profits, use, data, services of management or staff, goodwill or reputation, business opportunities of any kind or nature whatsoever, loss of use of any computer or any other equipment or plant, or losses or obligations under or in relation to any other contract with a third party, including customers, arising in any manner from this Agreement.
- 6.4.2.** Neither Party will be liable for damages caused by any service or equipment that is not provided, furnished or managed by it, if such service or equipment caused or gave rise to such damage.
- 6.5.** Neither Party shall withhold payments owed to the other Party based on amounts that it is unable to collect from an end customer because of fraud or other causes. Therefore, each Party shall be responsible for payment of the amounts related to the same.
- 6.6.** Subject to Clauses 6.1, 6.2, 6.3 and 6.4, each Party ("Indemnifying Party") agrees to protect and hold harmless the other Party from any losses or legal procedure arising from or related to claims of a third party arising from any negligence or intentional action or omission of the Indemnifying Party (solely to the extent that the other Party did not directly participate in and does not bear direct responsibility for such action or omission), provided that the indemnification and obligation to hold harmless under this Clause 6.6 is specifically conditioned on the following: (i) the Party against whom a claim is made by a third-party provides prompt notification in writing to the Indemnifying Party of any such claim when it obtains knowledge thereof; (ii) if requested by the Indemnifying Party, the Party against whom the claim has been made permits the Indemnifying Party to have control of the defense, settlement and resolution of the claim; and (iii) the Party against whom the claim has been made cooperates, at its expense, in a reasonable way to facilitate the defense of such claim or the negotiations for its settlement.
- 6.7.** Each Party shall implement reasonable precautions to prevent any unauthorized access by third parties to any of its telecommunications network used to provide the Services to the other Party, but neither Party shall be liable for any loss or damage sustained by the other

Party in the event of any unauthorized access in spite of the reasonable precautions that the Parties undertook. This provision does not require payment by one Party for services that are not in fact received by the other Party in accordance with this Agreement due to interference of third parties.

## 7. RELEVANT AUTHORITIES

7.1 The execution and performance of this Agreement by the Parties, shall be subject to all the existing and future relevant regulations and laws issued by any duly registered authority having a legitimate jurisdiction, and shall be subject to the obtaining and renewal of the governmental approvals, consents, authorizations, licenses and permits required for the entry into and performance of this Agreement according to each of its terms and conditions of this Agreement by the Parties hereof. Each of the Parties hereto shall make its best efforts to get and keep in effect such governmental approvals, consents, authorizations, licenses and permits related to the provision of Services, each of them in respect of any jurisdiction to which it legitimately is subject. Each Party shall ensure a free flow of information between them so as to allow the Parties to keep each other informed, to the extent they know of any information indicating any proposed, pending or adopted action by any regulatory or governmental body concerning the execution or performance of this Agreement, including, in the case of **AT&T**, applicable orders or regulations of the Federal Communications Commission ("FCC"), if any, and in the case of **ETECSA**, applicable orders or regulations of the Republic of Cuba. **AT&T** shall send **ETECSA** a copy in writing of the authorizations: granted it by the authorities of the United States needed to perform this Agreement; or otherwise applicable to **AT&T** with respect to its execution or performance of this Agreement.

7.2. In no case does **AT&T** require any specific authorization from any relevant authority of the Republic of Cuba to enter into and perform this Agreement, nor does **ETECSA** require the specific authorization of any relevant authority of the United States.

## 8. EXCHANGE OF INFORMATION: CONFIDENTIALITY

8.1. Each Party hereby undertakes to protect Confidential Information received from the other Party in relation to this Agreement; in the same or at least in a reasonably similar manner as it protects its own Confidential Information. All information regarding this Agreement rendered by a Party to the other Party, the Agreement itself, all information concerning or generated by or arising from performance of this Agreement, and all information which by its nature is confidential or is disclosed in confidence by whatever means (whether written, oral or in any other form), shall be considered confidential for

the purpose of this Agreement, including without limitation, all documentation, technical information, software and business information ("Confidential Information"). This obligation shall not apply to information: (i) in the public domain other than because of a breach of this Agreement, (ii) which is known by the receiving Party before such disclosure has taken place, (iii) obtained from a third party who is authorized to divulge the same, or (iv) which is required to be disclosed by law, provided that, with respect to (iv), the Party making disclosure or intending to make disclosure of Confidential Information shall inform the other Party as soon as possible of any demand for the disclosure of such information, any disclosure, and all pertinent details, and shall provide all related documents, to the extent permitted by law.

**8.2** The Parties acknowledge and agree that Confidential Information, as well as any other information sent by any of the Parties to the other is and shall remain property of that Party, shall be kept strictly confidential, shall be used only for the purpose of this Agreement and shall not be disclosed to third parties without the prior written consent of the other Party, aside from either Party's or its Affiliates' employees and professional advisors who need to know the same for the performance of the Agreement. For the purpose of this Agreement, a Party's "Affiliates" are the entities owned or controlled by that Party or an entity that owns or controls that Party. Upon termination of this Agreement and upon request, each Party shall return any such Confidential Information to the other Party as soon as possible, and shall cease and desist from making further use of such Confidential Information. The Parties shall not disclose any Confidential Information acquired during the course of their relationship and for a period of three (3) years after termination of this Agreement (except in the case of software, which shall be for an indefinite period), and shall use reasonable endeavors, including inclusion of appropriate contractual obligations to prevent their respective employees, assignees, subcontractors or agents from disclosing it.

**8.3** It is acknowledged by the Parties that a violation of this Clause 8 might cause irreparable harm, for which monetary damages alone may not be adequate and, therefore, the Parties may seek specific performance and injunctive or other equitable relief as a remedy for any such violation, breach or anticipated breach without the necessity of posting a bond exclusively. All disputes concerning Clause 8 shall be finally settled exclusively through the procedures set forth in Clause 16 of this Agreement. Each Party shall be liable under this Agreement to the other Party in respect of any proven damage or loss to the other Party caused by its unauthorized use or disclosure of such Confidential Information up to the sum of (Begin Confidential Information) [REDACTED] (End Confidential Information).

- 8.4** Upon filing this Agreement with the Federal Communications Commission ("FCC"), **AT&T** shall request the FCC pursuant to applicable procedures, including those available under 47 CFR 0.459, not to make publicly available such parts of this Agreement that **AT&T** and **ETECSA** shall have jointly designated or, failing agreement, such parts as either of them shall have designated as Confidential Information as not to be made publicly available. **AT&T** shall promptly inform **ETECSA** of the FCC's ruling on this request, and, if the request is denied, in whole or in part, the Parties will consult on how to proceed.

**9. PUBLICITY AND MARKETING**

- 9.1** Except as specified in this Clause 9, a Party shall not make any public statements, disclosure or announcements relating to this Agreement (except as expressly required by law) nor shall it utilize the name, trademarks or symbols that identify the other in any advertising, sales promotion, press releases or other publicity in connection to this Agreement, without prior written authorization to such effect from the other Party, which authorization shall not be unreasonably withheld. All announcements, marketing materials, press releases or other materials to be distributed to the public, or to the media in which one of the Parties utilizes the name of the other, shall be subject to written authorization from the other prior to their release or distribution.
- 9.2** **AT&T** and **ETECSA**, each at its own cost and expense, may advertise, distribute marketing materials, and promote in any way the Services provided in this Agreement in their respective territories.

**10. DURATION, EXTENSION AND TERMINATION; RIGHT OF SUSPENSION OR TERMINATION UPON THE OCCURRENCE OF CERTAIN EVENTS.**

- 10.1** The Parties agree hereby that this Agreement shall become effective ("Effective Date") on the later of (a) the date when signed by both Parties or (b) issuance to **AT&T** by the governmental authorities of the United States of all licenses, waivers, and authorizations required for **AT&T** to enter into and perform this Agreement according to each of its terms and conditions, and it shall remain valid and in effect for an initial period of one (1) year from the Effective Date and will be automatically extended and shall continue in full force and effect for the same one (1) year consecutive periods, unless terminated by either Party by giving the other a notice in writing at least (30) calendar days prior to the expiration of the Agreement. The obligation to make payments of sums owed prior to termination of this Agreement or the expiration of the term of this Agreement, whether or not invoiced at the time of termination, shall not be affected by and shall survive such

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termination. The Parties shall send invoices within ten (10) calendar days of any termination or expiration.

**10.2** The Parties may, by agreement signed to this effect, terminate this Agreement at any time.

**10.3.** Notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement or any Service immediately if the other Party:

- (a) commits a material breach of this Agreement which is capable of remedy and fails to remedy the breach within the term of thirty (30) calendar days of a written notice to do so; or
- (b) commits a material breach of this Agreement which cannot be remedied.

The Party terminating this Agreement pursuant to this Clause 10.3 shall promptly advise the other Party that it has terminated this Agreement.

**10.3.1.** If a Party terminates this Agreement or any Service pursuant to this Clause 10.3, the obligation to make payments of sums owed prior to termination, whether or not invoiced at the time of termination, shall not be affected by and shall survive such termination. The Parties shall send invoices within ten (10) calendar days of any such termination.

**10.4.** Termination for breach is without prejudice to any other available right or remedy arising from the breach.

**10.5. Right of Suspension or Termination upon the Occurrence of Certain Events**

**10.5.1** Notwithstanding any other provision of this Agreement to the contrary, including without limitation Clause 7.1 and Clause 15 (Force Majeure), either Party may, in its unreviewable discretion, suspend its performance of, or terminate, this Agreement, or suspend or terminate any Service under this Agreement, in the event of any of the following, (a), (b), (c) or (d):

- (a) a court of the United States of America (including federal, state or local courts), or the Clerk thereof, or any attorney of the United States purporting to act under legal authority, issues a writ of attachment, garnishment, execution, injunction or restraint, or comparable actions, or a lien of lis pendens or other lien, against any, some or all payments by **AT&T** in favor of **ETEC**SA under this Agreement ("Measure"), including without limitation payments that are past due, currently due or yet to become due, and the payments provided for in

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Clause 11.3, and the Measure is not vacated by the effective date of the suspension or termination specified by **ETECSA** in its Notice; or

- (b) the United States Department of the Treasury's Office of Foreign Assets Control issues a specific license pursuant to the Cuban Assets Control Regulations, 31 C.F.R. Part 515, authorizing any of the measures within the scope of Clause 10.5.1(a); or
- (c) any license, waiver or authorization granted by a governmental authority of the United States of America (including federal, state or local authorities) that is required for **AT&T** to make any, some or all payments to **ETECSA** at **ETECSA**'s account at the bank in Cuba specified by **ETECSA** in a confidential writing subject to Clause 8 for the receipt of payments due it under this Agreement, including without limitations payments that are past due, currently due or yet to become due, and the payments provided for in Clause 11.3, and at the rates and for the duration specified in this Agreement, including Annex A, is revoked, or not renewed prior to expiration, or any order is issued by governmental authorities of the United States or legislation is adopted by the United States blocking, freezing, confiscating or otherwise restraining, preventing or delaying any such payments being made by **AT&T** to **ETECSA** at **ETECSA**'s account at the bank in Cuba specified by **ETECSA** in a confidential writing subject to Clause 8 for the receipt of payments due it under this Agreement ("governmental order"), and at the rates and for the duration specified in this Agreement, including Annex A, and the license or other authorization is not restored or renewed, or the governmental order is not rescinded, by the effective date of the suspension or termination specified in **ETECSA**'s Notice; or
- (d) any license, waiver or authorization granted by a governmental authority of the United States (including any federal, state or local authority) that is required for **AT&T** to perform this Agreement according to each of its terms and conditions is revoked, modified or not renewed prior to expiration of the term of this Agreement; or any legislation, regulation, order or other measure is adopted or issued by such governmental authority, with the effect that **AT&T** is prevented from performing this Agreement according to each of its terms and conditions; or any opinion or ruling is issued by any such governmental authority that it would be contrary to law for **AT&T** to perform this Agreement according to each of its terms and conditions.

**10.5.1.1** Any exercise of the right of suspension or termination by **ETECSA** under Clause 10.5.1 is without prejudice to **AT&T**'s rights under Clause 11.3.5.



**10.5.2.** If **AT&T** has knowledge of the occurrence of any of the events specified in subparagraph (a), (b), (c) or (d) of Clause 10.5.1, **AT&T** will use best reasonable efforts to notify **ETEC** as soon as possible by the means provided for in Clause 14 and, in addition, by telephone to the persons identified according to what is established in Clause 14. **AT&T** is not responsible for monitoring or actively seeking information regarding the occurrence of any of the events specified in subparagraph (a), (b), (c) or (d) of Clause 10.5.1. **ETEC** shall not rely on **AT&T** to notify **ETEC** of the occurrence of the events specified in subparagraph (a), (b), (c) or (d) of Clause 10.5.1. **AT&T** shall provide **ETEC** with all documents and papers served upon it in connection with the occurrence of any of these events as soon as possible by the fastest available means, unless the provision of such documents and papers is expressly prohibited by applicable law, including, but not limited to, statutes, regulations, judicial decrees, rulings, or orders, or agency decrees, rulings or orders.

**10.5.3** A Party shall give Notice of its exercising its rights under Clause 10.5.1 in writing. Its exercise of its rights under this Clause 10.5.3 shall be effective immediately upon its giving such Notice, unless the Notice expressly provides otherwise.

**10.5.4** The Parties agree to work together to preserve the security of their respective networks and communications against cyber crimes, illegal penetration or other similar actions. The occurrence of any cyber crime, illegal penetration or any other similar action is grounds for either Party to cancel or suspend all or any Service. Without prejudice to the foregoing right to cancel or suspend all or any Service detailed in this Clause 10.5.4, and without establishing a binding obligation, the Parties express their intention for such Party to provide the other Party with as much notice as possible of such action as is reasonable in the circumstances, well as the opportunity to assist in its remediation of any such breach of network security.

## **11 GENERAL OUTLINES, BILLING, PAYMENT, RECONCILIATION AND CLAIMS**

### **11.1. General outlines**

#### **11.1.1 (Begin Confidential Information)**

**(End Confidential Information).**

#### **11.1.2. (Begin Confidential Information)**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (End Confidential Information).

**11.1.3.** For all purposes of this Agreement, and notwithstanding any other provision of this Agreement to the contrary, payment shall be deemed to have been made to **ETECSA**, and a payment in favor of **ETECSA** shall be deemed to have been satisfied, only if, at the time, and to the extent the payment is received by **ETECSA** in Cuba at its account at the bank and branch in Cuba specified by **ETECSA** in separate, signed writing pursuant to Clause 11.3.7. For all purposes of this Agreement, and notwithstanding any other provision of this Agreement to the contrary, payment shall be deemed to have been made to **AT&T**, and a payment in favor of **AT&T** shall be deemed to have been satisfied, only if, at the time, and to the extent that the payment is received by **AT&T** at its account at the bank and branch specified by **AT&T** pursuant to Clause 11.3.8. This Clause 11.1.3., constitutes the essence of this Agreement, and shall be strictly construed and applied in every respect and circumstance. It is a material term of this Agreement.

**11.1.4.** Payments, including credits against prepayments as well as prepayments, which are not the subject of a pending conciliation or arbitration pursuant to Clauses 11.5 or 16, shall not be delayed by reason of the pendency of same. This Clause 11.1.4 is a material term.

**11.1.5.** Bank fees or any other expense related to money transfer, charged by the Debtor Party's originating bank will be the Debtor Party's responsibility. All the other expenses related to such bank transfers, assessed other than by the Debtor Party's bank, including the fees of international intermediary banks, will be covered at the expenses of the Creditor Party.

11.1.6. (Begin Confidential Information) [REDACTED]  
[REDACTED]  
[REDACTED] (End Confidential Information).

11.1.7. (Begin Confidential Information) [REDACTED]  
[REDACTED]  
[REDACTED] (End Confidential Information).

11.1.8 AT&T shall be obligated to provide Services under this Agreement only if ETECSA is in full compliance with the requirements of Clauses 11.3 and 11.4 of this Agreement in relation to settlement and crediting of amounts due AT&T against amounts prepaid by AT&T. This Clause 11.1.8 is a material term.

## 11.2. Billing

11.2.1. For the purpose of the reconciliation described in Clause 11.4 below, each Party will issue a monthly invoice covering the Service minutes billed to end user customers of the Party not preparing the invoice and actually terminated by the Party preparing the invoice during the prior month, as well as Service minutes that actually originated on the network of the Party preparing the monthly invoice but are billed by the other Party ("Reverse Billed Service"). Each invoice shall include at least the following information: type of Service, number of calls; Billable Conversation Minutes; applicable per minute termination rate in the agreed upon currency or medium of exchange; surcharges (if applicable), and the total amount credited from one Party to the other, including credits resulting from any audit or dispute resolution process. Each Party shall forward the invoice to the other as soon as practicable, but in no event later than ten (10) days after the calendar month to which the invoice relates. Such invoices shall be sent to the address specified in writing by the other Party from time to time. Each Party shall not invoice the other Party for Services provided and received more than ninety (90) calendar days after the date on which the Service was provided and received.

11.2.1.1 The duration of each Service call shall be measured based on the actual seconds of Billable Conversation Time; where "Billable Conversation Time" means the period of time (i) commencing after all of the digits necessary to establish the call (e.g., access codes, called number) have been entered and recognized by the network and the called party answers

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(off-hook condition); and (ii) ending when the network recognizes that the calling or called party hung-up (on-hook condition), as measured by the originating network.

**11.2.1.2** An arithmetic total of the actual seconds of Billable Conversation Time for each applicable Service call type during a calendar month shall then be computed and converted from seconds of Billable Conversation Time to Billable Conversation Minutes, without rounding with two decimal digits. The Parties agree that all of the charges and invoices shall be based on the time registered by the installations of the Party that offers the Service. This time shall be in the following form: By **AT&T** in Greenwich Mean Time ("GMT") and for **ETECSA** GMT-5. The Parties also agree that the Party that receives the charges or invoice(s) from the Party that provides them, shall be responsible for converting the time zone used by the Party that provides them, accordingly, for the purposes of validation and conciliation.

**11.2.2.** The invoices shall be sent by e-mail to the addresses set forth in a separate, signed writing by the Parties, which each Party shall keep confidential under Clause 8 and which the other Party shall not file with governmental authorities except with the prior written consent of the Party providing said information, which consent shall not be unreasonably withheld, or when required by law. Each Party will acknowledge receipt of the writing upon receiving it.

**11.2.3** The invoice shall be deemed accepted by the Party to which it was issued, if said Party does not raise any objection in writing within the term of **(Begin Confidential Information)** [REDACTED] **(End Confidential Information)** following the date the invoice is received. If either Party, in good faith, wishes to dispute the amount or appropriateness of any charge included in an invoice from the other, the disputing Party must provide the following documentation reasonably required to resolve the dispute:

. Minute Dispute – The disputing Party must provide the billing Party with a hard copy of its written description of the type of minute dispute being issued. All minute disputes must be supported by a call detail record (CDR) from the billing Party's call detail records supporting the alleged erroneously-billed calls or minute duration variances.

Rate/Class Dispute – The disputing Party must provide documentation identifying the time period, appropriate rate/code, total minutes and amount in dispute for each country and documentation detailing the rate/code agreed upon and/or call detail records to support the claim.

11.2.4 No payment may be withheld for sums uncollectible from the end customer because of fraud or other causes. Therefore, each Party shall be responsible for the sums related to the same.

11.3 Payments

11.3.1 AT&T shall make a first prepayment in favor of ETECSA (Begin Confidential Information) [REDACTED] (End Confidential Information), which shall be paid in the Designated Currency pursuant to Clause 11.1.2.

11.3.2 Thereafter, AT&T shall make a prepayment in favor of ETECSA at least (Begin Confidential Information) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11.3.2.1 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (End Confidential Information).

11.3.3 ETECSA shall send AT&T the information on the number of minutes prepaid for the upcoming month of traffic, no later than (Begin Confidential Information) [REDACTED]  
[REDACTED] (End Confidential Information).

**11.3.3.1** In the event that **ETECSA** estimates, at any time after receipt of the Monthly Prepayment that the amount prepaid by **AT&T** will not be enough to cover the traffic month before the next Monthly Prepayment is due, **ETECSA** (Begin Confidential Information) [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (End Confidential Information).

**11.3.3.2** Upon **AT&T**'s receipt of the Notice, **AT&T** shall make the payment in the amount of the Supplemental Monthly Prepayment in favor of **ETECSA** within five (Begin Confidential Information) [REDACTED] (End Confidential Information).

**11.3.3.3** If **AT&T** does not make the Supplemental Monthly Prepayment (Begin Confidential Information) [REDACTED] (End Confidential Information), **ETECSA** reserves the right to, and may, suspend the Services immediately for a temporary term, until the specified amount is received in full.

**11.3.3.4** In the event that **ETECSA** does not receive the Supplemental Monthly Prepayment as needed to cover in full the remainder of the traffic month, and **AT&T** has made the Monthly Prepayment for the following month, **ETECSA** may use such Monthly Prepayment made for the following month to the extent required to cover the current month of traffic, and deduct the amount of prepayment so used from the prepayment balance for the following month. In the event of such deduction, **AT&T** shall make an additional prepayment for the following month to replenish the total Monthly Prepayment in the amount of the deduction no later than (Begin Confidential Information) [REDACTED] (End Confidential Information).

**11.3.3.5** In the event that **ETECSA** provides Service in a traffic month which was not covered by a prepayment, **ETECSA** shall, at its election, either (a) provide Notice of the amount due for the uncovered Service, and, upon **ETECSA**'s request in the Notice, **AT&T** shall make

payment of such amount at the same time that it makes its prepayment for the following traffic month, (b) include the amount due for the uncovered Service in its monthly settlement statement pursuant to Clause 11.4; or (c) request AT&T to make payment of the amount due for the uncovered Service within (Begin Confidential Information) [REDACTED]

[REDACTED] (End Confidential Information).

11.3.3.6 Notwithstanding any other provision of this Agreement to the contrary, ETECSA may suspend Services immediately in the event that (Begin Confidential Information) [REDACTED]

[REDACTED] (End Confidential Information).

11.3.4. All the payments under this Agreement, including but not limited to prepayments under this Clause 11.3, will be made (Begin Confidential Information) [REDACTED] (End Confidential Information).

11.3.5. AT&T may, at any time, request a refund of its unused prepayment balance. In the event of such a request, (Begin Confidential Information) [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] (End Confidential Information).

11.3.6. To send bank transfers, no U.S. bank (or branches or subsidiaries of same) located in any country, nor any non-U.S. bank (or branches or subsidiary of same) in the territory of the U.S., may be used as an intermediary. (Begin Confidential Information) [REDACTED]

[REDACTED] (End Confidential Information).

11.3.7 All payments to ETECSA that are required or permitted under this Agreement shall be made to ETECSA (Begin Confidential Information) [REDACTED]

[REDACTED] (End Confidential Information) AT&T shall keep ETECSA's writing confidential pursuant to Clause 8 of this Agreement, and shall not file same with any governmental authority without ETECSA's prior written consent. Such consent shall not be unreasonably delayed, withheld or conditioned, provided, however, that it is understood that it is not unreasonable for a Party to condition consent upon a Party pursuing and exhausting available administrative procedures to relieve a Party from any obligation to file such

writing or to have the writing maintained as confidential and not available to third-parties by the governmental authority.

**11.3.8.** In the event **ETECSA** has to make any payment in favour of **AT&T**, such payment shall be made to **(Begin Confidential Information)** [REDACTED] **(End Confidential Information)**. **ETECSA** shall keep **AT&T**'s writing confidential pursuant to Clause 8 of this Agreement, and shall not file same with any governmental authority without **AT&T**'s prior written consent.

**11.3.9.** Under this Agreement, neither Party shall set-off, seize or act against the amounts owed to the other Party on account of any obligations or debts the other Party may have to it under any other agreement or covenant in writing. Nevertheless, the Parties shall reconcile their mutually owed amounts on various Services rendered under this Agreement, as set forth in Clause 11.4.

**11.3.10** Clause 11.3, including each of its provisions, is deemed to be material terms.

#### **11.4. Reconciliation**

**11.4.1** **ETECSA** shall make monthly settlement statement of the invoices approved by both Parties, figuring out the net balance of same, that is the result of the difference between the amounts receivable and payable as per the Services provided each other between the Parties under this Agreement. The monthly settlement statement shall include the reconciliation between the volumes of estimated (inbound and outbound) traffic that was paid for and the traffic actually sent.

**11.4.2** The monthly settlement statement shall be sent to **AT&T** for approval no later than the first five (5) calendar days following the receipt by **ETECSA** of **AT&T**'s monthly invoice. If, as a result of such reconciliation, a net balance is due to **ETECSA**, **AT&T** shall make payment of same within five (5) business days counted from the date of **AT&T**'s receipt of the monthly settlement statement sent by **ETECSA** pursuant to 11.4.1. **(Begin Confidential Information)** [REDACTED] **(End Confidential Information)**.

**11.4.3** Likewise, as part of the prepayment for the following month that **AT&T** shall make to **ETECSA** for the estimated traffic, **ETECSA** shall enter as credits the amounts **ETECSA** owes to **AT&T** for the Services **AT&T** rendered to **ETECSA**, reducing in the corresponding amount the prepayment to be made by **AT&T**.

#### **11.5 Disputes**



- 11.5.1** The Parties shall attempt in good faith negotiations to seek a solution for any differences, dispute, controversy or claim which may arise between them regarding the interpretation, performance or failure to perform under this Agreement, or otherwise arising under or concerning or as a consequence of the implementation of this Agreement (collectively "Dispute"), in accordance with the procedures set out in this Clause 11.5 and Clause 16.
- 11.5.2** All Disputes between the Parties shall be presented in writing and shall be notified to the relevant persons identified in Clause 14.
- 11.5.3** Except with respect to Disputes within the scope of Clause 11.2.3, the claims shall be presented no later than **(Begin Confidential Information)** [REDACTED]  
[REDACTED]  
[REDACTED] **(End Confidential Information)**.
- 11.5.4** The Party that receives the claim about the Dispute shall acknowledge receipt of it in writing.
- 11.5.5** The Party that receives the claim about the Dispute shall have to analyze the subject, work with the other Party to reconcile the accounts and take the required actions, giving answer in writing to the disputing Party within the thirty (30) calendar days following the date of notification of the Dispute; so long as the other Party cooperates in the reconciliation of the amounts due or otherwise shares any information that is under its control and which is required to properly evaluate the Dispute within such thirty (30) days.
- 11.5.6** In the event that the Parties have not resolved in writing a Dispute within the scope of Clause 11.2.3 within the term stipulated in Clause 11.5.5, the matter may be referred to arbitration by either Party pursuant to Clause 16.3.1 through Clause 16.7.
- 11.5.7** In the event that the Parties have not resolved in writing a Dispute within the term stipulated in Clause 11.5.5 (other than Disputes within the scope of Clause 11.2.3), the matter shall be referred to more senior persons pursuant to Article 16.2.
- 11.5.8** All claims and other communications concerning a Dispute shall be kept confidential pursuant to Clause 8.

## **12. FAILURE TO PAY**

- 12.1** Notwithstanding any other provision in this Agreement to the contrary, if a Party fails to make a payment at the time payment is required, the other Party may, after giving Notice of such failure to pay: (a) limit or suspend some or all of the Services provided under this Agreement until the owed balance is paid; or (b) terminate this Agreement. The Party may exercise its rights under (a) and (b) of this Clause 12.1 without any further procedures.

- 12.2.** In addition, or in the alternative, to the rights and remedies provided for in Clause 12.1, the non-breaching Party may impose or apply any other remedies available to it to for non-payment.

**13. MODIFICATIONS**

This Agreement may not be amended or modified in any way, except by means of a document signed by representatives duly authorized by each Party hereto.

**14. NOTICES.**

All the notices, reports, writings and other communications required or permitted in relation to this Agreement shall be sent to all of the persons specified by each Party in a separate writing by: personal delivery, e-mail, courier service with the shortest available time for delivery, or fax. Said writings shall be maintained as confidential under Clause 8 and shall not be filed by either Party with any governmental authority without the other Party's prior written consent, which consent shall not be unreasonably withheld. Notice shall be deemed to have been provided, given or received only at the earliest time of actual receipt by one of the methods detailed above. The preceding sentence shall apply whether a clause of this Agreement refers to the provision of Notice, the giving of Notice or the receipt of Notice. In order to fully comply with Clause 8 of the Agreement, certain sensitive strictly-corporate information of the Parties will be exchanged in accordance with the terms and conditions that the Parties may agree to in a document signed by both Parties.

**15. FORCE MAJEURE**

**15.1.** Non-performance of either Party's obligations pursuant to the Agreement or delay in performing same shall not constitute a breach of the Agreement if, and for as long as, it is due to a force majeure event, including, but not being limited to, governmental action, or requirement of regulatory authority, lockouts, strikes, shortage of transportation, war, rebellion or other military action, fire, flood, natural catastrophes, or any other unforeseeable obstacles that a Party is not able to overcome with reasonable efforts, or non-performance of obligations by a sub-contractor to a Party pursuant to any of the aforementioned reasons. The Party prevented from fulfilling its obligations shall, on becoming aware of such event, inform the other Party in writing of such force majeure event as soon as possible. The period for the performance of contractual obligations affected by force majeure shall be understood as extended for the same period as the force majeure may last. If the force majeure event continues for more than sixty (60) calendar days, either Party shall have the right to terminate the Agreement or any Service with immediate effect by written notice, and neither Party shall have the right to be compensated for any loss related to such termination (provided that force majeure as defined hereunder shall not serve as an excuse for non-payment of amounts due for services already received). For purposes of this Clause 15.1, the term "governmental action" includes, without limitation, governmental provisions, regulations, proclamations, orders, actions or revocation or denial of or failure to timely renew licenses of the Parties or any parent company of the Parties, or any writ or order issued by any judicial authority or attorney purporting to act under legal authority, that prevents or intends to prevent,

fully or partially, the timely and full performance of this Agreement.

- 15.2** If the affected Party fails to inform the other Party of the occurrence of a force majeure event as set forth in Clause 15.1 above, then such Party thereafter shall not be entitled to refer such events to force majeure as a reason for non-fulfilment. This obligation does not apply if the force majeure event is known by both Parties or the affected Party is unable to inform the other Party due to the force majeure event.

**16. APPLICABLE LAW / SETTLEMENT OF DISPUTES.**

- 16.1** The Agreement and any matters relating hereto shall be governed by and construed in accordance with the laws of Spain.

- 16.2** If a Dispute other than a Dispute within the scope of Clause 11.2.3 (Billing) is not resolved pursuant to Clause 11.5.7, the Dispute shall be referred to more senior persons of the Parties who shall try to resolve the Dispute within a further thirty (30) calendar day period. If no resolution is found each Party shall be entitled to commence the arbitration proceedings described below.

- 16.3.1** When entitled to submit a Dispute to arbitration pursuant to Clause 11.5.6 or Clause 16.2, a Party may submit the Dispute to be finally settled by the International Court of Arbitration of the International Chamber of Commerce (the "Court"), according to the Rules of Arbitration of the International Chamber of Commerce (ICC), by three arbitrators appointed in accordance with said Rules, provided that:

- (a)** ETECSA and AT&T shall each appoint an arbitrator, and that a person nominated by ETECSA to be an arbitrator is a citizen of Cuba, and that a person nominated by AT&T to be an arbitrator is a citizen of the United States, shall not be grounds for challenge to the nominations or grounds for refusal to appoint the person so nominated;
- (b)** the two (2) nominated and appointed arbitrators shall select the third arbitrator to serve in addition to the two arbitrators nominated by the Parties, which third arbitrator shall serve as President of the Arbitration Tribunal, and such third arbitrator shall not be a national of the United States or Cuba. In the event the two nominated and appointed arbitrators cannot agree on the appointment of the third arbitrator, the Court shall appoint the third arbitrator pursuant to its rules, provided, however, that it shall not appoint a national of the United States or Cuba; and
- (c)** The arbitration shall be conducted in the English and Spanish languages.

- 16.3.2** The place of arbitration shall be Paris, France, or such other location as may mutually be agreed upon the Parties in writing.
- 16.3.3** Any monetary award by the arbitral tribunal shall be denominated in the currency specified in Clause 11.1.1 and payable in the currency specified in Clause 11.1.2 of this Agreement.
- 16.3.4** The Parties agree that that this Agreement and any dispute between the Parties arising out of or relating to same are commercial in nature.
- 16.3.5** The decision of the arbitral tribunal, including with respect to its jurisdiction, shall be final and binding on the Parties, who waive any recourse to judicial authorities for review of the arbitral award to the fullest extent permitted by law. The arbitral tribunal shall not have the power to award punitive or exemplary damages; any other liabilities, damages or remedies excluded by this Agreement, including limitations of liability and exclusions; or a Party's attorney fees and costs, which each Party shall bear.
- 16.3.6** Notwithstanding any provision of the Rules of Arbitration to the contrary, neither Party may seek interim nor conservatory measures from a judicial authority, including, but not limited to, requiring that the other Party continue the Services that have been suspended or terminated.
- 16.3.7** In no case shall the tribunal issue an interim or final decision that shall obligate the resumption or continuation of a Service.
- 16.4** The arbitration costs shall be paid as per the arbitration award.
- 16.5** Clause 16 shall be treated as an agreement independent of the other terms of the Agreement. A decision by the arbitration authority that this Agreement is null and void shall not entail ipso-jure the invalidity of the arbitration Clause.
- 16.6** Arbitration pursuant to this Clause 16 shall be the sole and exclusive means for the resolution of any dispute, controversy or claim which may arise between the Parties regarding the interpretation, performance, or failure to perform, or the exercise of any right, or the satisfaction of any obligation, under this Agreement, or otherwise arising under or concerning this Agreement.
- 16.7.** An arbitration award rendered pursuant to this Clause 16 may be recognized and enforced by any court of competent jurisdiction.

**16.8.** Except as necessary to seek enforcement of any arbitral award, the Parties, their representatives, other participants and arbitrators shall hold the existence, content and results of arbitration in confidence subject to Clause 8 of the Agreement.

**17. MISCELLANEOUS.**

**17.1 Entire Agreement; Amendments:** This Agreement and the Annexes hereto are the Agreement and the full understanding reached by the Parties with respect to the purpose of this Agreement and they supersede all previous negotiations, undertakings or documents referred to what is provided for herein. Except as otherwise stated specifically in this Agreement, the obligations and responsibilities of the Parties under this Agreement are only to the other Party and not to third parties, including any other client. Except for amendments or modifications by means of a document signed by representatives duly authorized by each Party as described in Clause 13 of this Agreement, this Agreement may not be modified or supplemented by any written or oral statements, course of dealing between the Parties, proposals, representations, advertisements, service descriptions or purchase order forms not expressly set forth in this Agreement.

**17.2. Waiver:** Failure by any Party at any time or times to require performance of any provision of the Agreement shall in no manner affect its rights to enforce the same, and the waiver by any Party of any breach of any provisions of the Agreement shall not be construed to be a waiver by such Party of any succeeding breach of such provision or waiver by such Party of any breach of any other provision hereof.

**17.3 Exercise of Rights without Prejudice:** The exercise of any right by a Party deriving from this Agreement or from the law applicable to it, shall take place without prejudice or limitation as to any other right or additional right or remedy that may exist in conformity with this Agreement, explicit or implicit, under the applicable law.

**17.4 Failure or Delay in Exercising Rights:** No delay by a Party to exercise any right or a non-exercise of it by the Party under this Agreement or the applicable law shall operate as a waiver of such right. The exercise in part of a right shall not preclude any other exercise or future exercise of such right or remedy deriving from it.

**17.5 Severability:** If any provision of this Agreement is or becomes or is deemed invalid, illegal or unenforceable in any jurisdiction, such provision shall be deemed amended to conform to applicable law, so as to be valid and enforceable or, if it cannot be amended without materially altering the intention of the Parties, it shall be stricken and the remainder of this Agreement shall remain in full force and effect, provided, that this

Clause 17.5 shall not apply to the following Clauses, and each of the provisions: Clauses 1.1, 2.1, 2.3, 3.1.1, 5, 6, 7, 8, 10, 11.1.2, 11.1.3, 11.1.7, 11.3, 11.5, 12.1, 16, 17.5, 17.8, 17.12, 18, and Annex A, and, provided further, that, in the event any of foregoing Clauses, or any part or provision thereof, is or becomes or is deemed invalid, illegal or unenforceable in any jurisdiction, either Party may terminate this Agreement in its unreviewable discretion.

**17.6 Designation as material; other designations:** The explicit designation of certain provisions in this Agreement as material terms does not imply other terms are immaterial, and shall not be used as evidence nor indication that other terms are immaterial. The explicit provisions in this Agreement as to the exercise of a right being at the unquestionable discretion of a Party do not mean that the exercise of other rights is not within the unquestionable exercise at the discretion of a Party, and shall not be used as evidence or indication that the exercise of other rights is not at the unquestionable discretion of a Party.

**17.7 Section Headings:** The headings of the Agreement are for the convenience of reference only and shall in no way limit or affect the meaning or interpretation of the provisions of the Agreement.

**17.8. Assignment**

**17.8.1.** Neither Party may transfer or assign this Agreement or any of its rights and obligations herein to a third party, including without limitation to an Affiliate, without the prior written consent of the other Party; provided, that in the case that **AT&T** assigns in whole or relevant part its rights and obligations under this Agreement that are to be performed in a jurisdiction other than the USA to an **AT&T** Affiliate authorized to perform the applicable obligations in such country ("Authorized Affiliate"), **ETECSA's** prior written consent shall not be unreasonably withheld. In the case of such assignment to an Authorized Affiliate, **AT&T** shall remain liable to **ETECSA**, and shall not be relieved of the obligations, rights and interests assigned to such Authorized Affiliate, should such Authorized Affiliate fail to comply with such obligations, rights and interests.

**17.8.2** If a Party wishes to transfer its rights and obligations herein to any entity which is its Parent company or an Affiliate (other than the assignment or delegation by **AT&T**, in relevant part, to an Authorized Affiliate of rights and obligations under this Agreement that are to be performed in a jurisdiction other than the USA), the Party shall give prior written notice to the other Party at least one hundred and twenty (120) calendar days prior to the

scheduled date of assignment. The notice shall include a list of all the principal shareholders of the Parent or Affiliate to which the rights and obligations shall be transferred, unless this requirement is waived by the non-assigning Party. The other Party shall give written notice of its consent, or refusal to consent, to the assignment within thirty (30) calendar days of receipt of such notice. If consent is denied, the Party may terminate this Agreement upon thirty (30) calendar days' written notice.

- 17.8.3** It is a condition of an assignment permitted by Clause 17.8.1 that the assignee will undertake in a prior written agreement with the non-assigning Party to assume and fulfill those obligations, rights and interests as to which it succeeds the assigning Party in this Agreement; and, except for with respect to an assignment or delegation by AT&T, in relevant part, to an Authorized Affiliate of rights and obligations under this Agreement that are to be performed in a jurisdiction other than the USA, the assigning Party shall be relieved of such obligations, rights and interests except those matters deriving from events which have occurred prior to such undertaking.
- 17.8.4** For the sake of clarity, this Agreement shall be binding on the Parties and it shall benefit the Parties and their authorized successors and assignees under the terms and conditions of the Agreement. A person who is not a Party to this Agreement or who is not an authorized successor or assignee under the terms and conditions of this Agreement shall not acquire any right whatsoever under it as a third-party beneficiary or other condition by virtue of this Agreement.
- 17.8.5** A non-fulfillment of the terms and conditions agreed for an assignment shall be deemed as a material non-fulfillment which shall give the other Party the right to end or terminate this Agreement immediately, without limitation, regardless the damages resulting from its actions.
- 17.9. Data Protection:** Each Party will strictly comply with the applicable laws and regulations regarding telecommunications services and data privacy. To the extent that a Party processes the data of the other Party, the Party processing the data shall:
- (a) only process the data in accordance with the instructions of the other Party; and
  - (b) take appropriate technical and organizational measures against unauthorized or unlawful processing of data and against accidental loss, destruction or damage of the same.



**17.10. Survival of Obligations:**

The rights and obligations of the Parties which by their nature remain valid after a termination, suspension, cancellation or expiry of this Agreement shall survive the termination, suspension, cancellation or expiry of this Agreement.

**17.11 Forecasts:**

**17.11.1** A Party may request that the other Party provide written non-binding traffic forecasts to ensure that the Parties are able to provide adequate capacity on the telecommunications facilities between the Parties and with its interconnection partners.

**17.11.2** The Parties shall not be under any obligation to provide the Services with respect to traffic received from the other Party's network which:

- (1.1.a) exceeds to a material extent the volume of traffic specified in the forecast provided by the other Party in respect of the period to which the forecast relates;
- (1.1.b) is materially different from the profile of the traffic specified in the forecast provided by the other Party in respect of the period to which the forecast relates;
- (1.1.c) in the absence of a forecast for the relevant period, it exceeds to a material extent the volume of traffic received from the other Party's network during the preceding three month period; or
- (1.1.d) in the absence of a forecast for the relevant period, it is materially different from the profile received during the preceding three month period from the other Party's network.

**17.12 Separate Entity**

**ETECSA** and its properties are not and shall not be held or deemed, responsible or liable for the acts, omissions, obligations or debts of, or claims or judgments against, the Republic of Cuba or any entities, institutions and agencies controlled or owned by or affiliated with the Republic of Cuba as well as other entities incorporated under the Cuban law. Neither the Republic of Cuba nor its controlled, owned or affiliated agencies, institutions or entities is to be or shall be held accountable for acts, omissions, obligations, or debts of, or claims or judgments against, **ETECSA**.

No act or omission by the Republic of Cuba or its controlled, owned or affiliated agencies, institutions or entities shall be used as or deemed to be a basis for estoppel or similar legal doctrines against **ETECSA** or its representatives or controlled, owned or affiliated institutions and entities, nor shall any act or omission by **ETECSA** shall be used as or deemed to be a basis for a estoppel or similar legal doctrines against the Republic of Cuba or its controlled, owned or affiliated agencies, institutions or entities.

#### **17.13 Differences with Other Agreements/Entire Agreement**

Any differences between the provisions of this Agreement and any other agreement between the Parties shall not be considered in the interpretation of this Agreement. This Agreement, including any Annexes attached hereto, sets forth the entire agreement and understanding of the Parties hereto and supersedes and merges any and all prior proposals, negotiations, representations, agreements, arrangements or understandings, both oral and written, relating to the subject matter hereof.

#### **17.14 Anti-Bribery**

Each Party hereby represents, warrants and covenants that it will not, under any circumstances, and at all relevant times, make, or cause or authorize any third party acting on its behalf to make, directly or indirectly, any prohibited bribes, offers, promises or payments of money, or anything of value, to any Foreign Official (including but not limited to government officials, government employees, any political party or political party official, any candidate for political office, or any person otherwise acting in an official capacity) pursuant to all applicable laws (including but not limited to any local anti-bribery laws), or any other third party, for the purpose of influencing such party's acts or decisions or in order to obtain or retain business or secure an unfair business advantage for either **AT&T** or **ETECSA** in performing its duties and obligations pursuant to this Agreement. Both **AT&T** and **ETECSA** expressly agree that this Agreement is the result of arms-length negotiations, and that neither Party has entered into this Agreement with a corrupt motive to obtain or retain business or to secure an unfair business advantage. Both Parties hereby warrant and undertake that they shall, at all material times, keep and maintain accurate and up to date accounting records to ensure that all transactions relating to this Agreement are sufficiently documented.

#### **17.15 No Special Concessions**

**AT&T** represents and warrants that it will not agree to accept special concessions directly or indirectly from **ETECSA** with respect to any U.S. international route to the extent, if any, that **AT&T** is prohibited from doing so by 47 C.F.R. § 63.14, the U.S. Federal Communications Act or other applicable law or regulation.

**17.16 Similar Services**

Notwithstanding any other provision of this Agreement to the contrary, ETECSA may disclose the form of this Agreement (with the exclusion of provisions that may include or constitute company-specific, confidential commercial and financial information of AT&T), without identifying AT&T as a party hereto, to a carrier with whom it is negotiating an agreement to provide "the same or similar services between the United States and Cuba." In the event that ETECSA intends to make such disclosure, it shall provide seven (7) calendar days prior written notice to AT&T. ETECSA shall require that the carrier to whom such disclosure will be made agree in writing to keep any such disclosure confidential upon the same terms and conditions as ETECSA is required by Clause 8 of this Agreement to maintain the confidentiality of this Agreement.

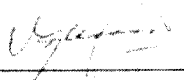
**18 Authentic Language**


This Agreement may be executed in English and Spanish, each of which shall be considered an original with identical legal effect. In the event that conflicting readings of any provision(s) in the respective versions emerge, the Parties shall use their best commercially reasonable efforts to settle on a reading that eliminates the conflict or in the event of not arriving at a settlement, the Spanish version will take precedence.

IN WITNESS WHEREOF, the Parties hereto have entrusted their duly authorized officials with the execution of this Agreement in four originals, two originals in English language and two originals in Spanish language, all with the same legal force, on this 10 day of August, 2016.

For ETECSA

For AT&T Corp.

  
\_\_\_\_\_  
Eng. Vivian Iglesias Barroso  
Main Director  
International Service

  
\_\_\_\_\_  
George B. Sloan  
Vice President, Global Access Solutions,  
International Access Management

ANNEX A

AGREEMENT FOR THE OPERATION OF INTERNATIONAL TELECOMMUNICATIONS  
INTERNATIONAL TELEPHONE SERVICE

This Annex A is part of the Service Agreement for the Operation of International Telecommunications between AT&T and ETECSA concluded the 10 day of August, 2016 (the "Agreement") The services to be rendered to customers under the Agreement will be the following:

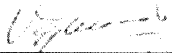
1. **Services:** As used in the Agreement, Services shall mean International Direct Dial Service, including facsimile and mobile traffic ("IDD") between the United States and Cuba
2. **Period of Services:**  
The Parties will provide these services on a twenty four (24) hours a day, seven (7) days a week basis
3. **Rates relating to incoming traffic to Cuba and outgoing traffic from Cuba**
  - 3.1 AT&T incoming Service minutes to Cuba will be rated at USD 0.60 per minute, and calls are billed in one (1) second increments with minimum call duration of one (1) second.
  - 3.2 The outbound traffic from Cuba to the United States (except for Toll Free services, which will be agreed to in a separate writing between the Parties) will be rated at USD 0.15 per minute. Calls are billed in one (1) second increments with minimum call duration of one (1) seconds.
  - 3.2.1 The Parties agree and acknowledge that the initial rate for the incoming traffic towards Cuba (0.60 USD per minute) that applies during three years from the Effective Date of this Agreement represents a significant reduction with respect to 0.84 USD per minute and will remain in effect at least for three (3) years starting from the Effective Date of this Agreement. The rates for the outgoing traffic from Cuba to the United States will remain in effect at least for three (3) years starting from the Effective Date of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, each Party, in its discretion, may terminate this Agreement upon thirty (30) calendar days written notice in the event of any action of a governmental authority that prevents AT&T from paying said rate for incoming traffic toward Cuba or charging said rate for outgoing traffic from Cuba for three (3) years from the Effective Date.


3.2.2. The Parties have no obligation to continue the Services beyond the expiration of three years from the Effective Date of this Agreement ("Initial Term"). In the event that the Parties mutually wish to continue the Services beyond said date, they will, no later than thirty (30) calendar days prior to the expiration of three years from the Effective Date of this Agreement, and periodically thereafter, review the applicable rates with the goal of reaching a commercially negotiated reduction in such rates, taking into consideration the increase of the volume of traffic and its trends, any improvement in the efficiency and quality of the Services, the benefit received by end user customers (collection rate) from the Effective Date of this Agreement, and may sign, as they deem appropriate, relevant Addendums setting such reduced rates. This information shall be provided for reference only and does not obligate the Parties to provide each other information concerning costs or other similar information. Notwithstanding any other provision of this Agreement to the contrary, the sole and exclusive right and remedy with respect to any breach of this Clause 3.2.2 is for the Party claiming a breach to terminate this Agreement upon thirty (30) calendar days written notice, or not renew or extend the Agreement upon its expiration.

Given in four originals, two originals in English language and two originals in Spanish language, all with the same legal force on this 10 day of August, 2016.

For ETECSA

For AT&T Corp.

  
Eng. Vivian Iglesias Barroso  
Main Director  
International Service

  
George B. Sloan  
Vice President, Global Access Solutions,  
International Access Management